



RECORDING REQUESTED BY:
Union Pacific Railroad Company

James Maples, Assessor-Recorder
Kern County Official Records

SOFIR
Pages: 9
2/09/2001
10:41:41

DOCUMENT #: 0201017930



0201017930

Fees 31.00
Taxes . . .
Other . . .
TOTAL
PAID . . 31.00

WHEN RECORDED MAIL TO:

Stat. Types: 1

✓ Mr. John Mue
Union Pacific Railroad Co.
49 Stevenson St. 15th Flr.
San Francisco, CA 94105

SPACE ABOVE THIS LINE RESERVED FOR RECORDER USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

(Re: Gosford Lease/Former Magna Facility, Pacheco Road, Kern County, California)

This Covenant and Agreement ("Covenant") is made by and between Union Pacific Railroad Company (UPRR) (the "Covenantor"), the current owner of certain property situated in Bakersfield, County of Kern, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code Section 1471(c), the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code ("H&SC") Section 25260. The Covenantor and the Department, collectively referred to as the "Parties", therefore intend that the use of the Property be restricted as set forth in this Covenant, in order to protect human health, safety and the environment.

ARTICLE I STATEMENT OF FACTS

1.01. The Property, totaling approximately 1.6 acres is more particularly described in Exhibit "A" and depicted on Exhibit "B", attached hereto and incorporated herein by this reference. The Property is located in the southwestern end of City of Bakersfield, in Kern County, California. The Property is bounded by Pacheco Road on the south, the San Joaquin Valley Railroad lines on the north, and unoccupied properties on the east and the west. The

Property is located in the County of Kern, State of California. This property is more specifically described as a portion State Board of Equalization Parcel No. 392-010-12-00. The portion of Parcel No. 392-010-12-00 is defined by the metes-and-bounds boundary description described in Exhibit "A".

1.02 The property was remediated to a Corrective Measures Consent Agreement, Docket HWCA:P1-96/97-002, signed on 25 March 1996 by the Department and the Southern Pacific Transportation Company (SPTCo). SPTCo was acquired by the Covenantor and assumed responsibility for the implementation of the Corrective Measures at the Property. The Corrective Measures implemented under the Consent Agreement were selected by the U.S. EPA pursuant to the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6901 et seq. in the Final Statement of Basis and Response to Comments, dated September 1996.

Pursuant to the Consent Agreement, Corrective Measures were implemented at the Property in two phases. The low pH soils of SWMU 10 were neutralized insitu from September through November 1998. The soils of SWMU 12 were excavated and disposed of offsite and an asphalt cover placed on the neutralized soils of SWMU 10 from July through August 1999. Naphthalene, 2-methylnaphthalene and phenanthrene remain within the neutralized soil of SWMU 10.

The asphalt cover, totaling approximately 0.56 acres, is located in the central-eastern portion of Property and is depicted on Exhibit "B".

1.03 Completion of the Corrective Measures removed all soils containing chemicals of concern from Solid Waste Management Unit 12 (SWMU 12) and adjusted the pH of SWMU 10 soils to a range from 5 to 9. Naphthalene, 2-methylnaphthalene and phenanthrene and potentially low levels of volatile organic compounds remain in the soil of SWMU 10.

1.04 The Statement of Basis provides for enforceable institutional controls limiting the future use of the Property to industrial use only. This restriction is necessary to preclude potential users' exposure to naphthalene, 2-methylnaphthalene and phenanthrene which remain in SWMU 10 soils following the completion of the Corrective Measures.

ARTICLE II DEFINITIONS

2.01 Department. "Department" shall mean the California Department of Toxic Substances Control and shall include its successor agencies, if any.

2.02 Owner. "Owner" shall mean the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.03 Occupant. "Occupant" shall mean Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

2.04 U.S. EPA. "U.S. EPA" means the United States Environmental Protection Agency and includes its successor agencies, if any.

ARTICLE III GENERAL PROVISIONS

3.01 Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to H&SC Sections 25202.5 and 25202.6, and Civil Code Section 1471; (b) inures to the benefit of and passes with each and every portion of the Property, (c) shall apply to and bind the respective successors in interest to the Property, (d) is for the benefit of, and shall be enforceable by the Department, and (e) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02 Binding Upon Owners/Occupants. Pursuant to H&SC Section 25202.5(b), this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees.

3.03 Written Notice of the Presence of Hazardous Substance. Prior to the sale, lease, assignment or other transfer of the Property, or any portion thereof, the owner, lessor, assignor or other transferor shall give the buyer, lessee, assignee or other transferee written notice that hazardous substances are located on or beneath the Property.

3.04 Conveyance of Property. The Owner shall provide notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect such proposed conveyance or transfer, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

ARTICLE IV RESTRICTIONS

4.01 Prohibited Uses. Future use of the Property shall be restricted to industrial and/or commercial use only, and the Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.
- (e) Any other purpose involving continual residential occupancy on a 24-hour basis.
- (f) Agricultural activities.

4.02 Soil Management. No activities which will disturb the soil at or below 0.67 feet below grade (e.g., excavation, grading, removal, trenching, drilling, filling, earth movement or mining) shall be permitted on the Property without a Soil Management Plan and a Health and Safety Plan approved by the Department. All contaminated soils brought to the surface by grading, excavation, trenching, drilling or backfilling shall be managed in accordance with all applicable provisions of state and federal law.

4.03 Prohibited Activities. No drilling for water, oil, gas or other mineral exploration shall be conducted on the Property without the prior written approval by the Department.

4.04 Non-Interference with Asphalt Cover. Covenantor agrees:

- (a) Activities that may disturb or alter the Asphalt Cover (e.g. excavation, grading, removal, trenching, drilling, filling, earth movement, or mining), shall not be permitted on the Property without prior approval by the Department, which shall not be unreasonably withheld.
- (b) All uses and development of the Property shall preserve the integrity of the Asphalt Cover.
- (c) Notification shall be given to the Department of: (i) The type, cause, location and date of any disturbance to the Asphalt Cover which could affect the ability of the Asphalt Cover to contain subsurface hazardous materials on the Property, and (ii) the type and date of repair of any such disturbance. Such notification shall be made within ten (10) working days of both the discovery of any such disturbance(s) and the completion of any repairs. Timely and accurate notification by any Owner or Occupant shall satisfy this requirement on behalf of all other Owners and Occupants.

4.05 Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health and safety.

4.06 Access for Implementing Operation and Maintenance Agreement. The entity or person responsible for implementing the Operation and Maintenance Agreement on the Property shall have reasonable right of entry and access to the Property for the purpose of performing such activities. Such right of entry and access shall continue until such time as the Department determines that such activities are no longer required.

4.07 Noninterference with Industrial Operations and Facilities. Pursuant to the provisions of H&SC Section 25202.5(b), the Restrictions and Covenants set forth herein shall not limit the use, modification, or expansion of railroad or other industrial operations or facilities on the Property.

ARTICLE V ENFORCEMENT

5.01 Enforcement. Failure of the Covenantor or Owner to comply with any of the provisions of Paragraphs 4.01 through 4.04 of this Covenant shall be grounds for the Department to require that the Covenantor or Owner modify or remove, as appropriate, any improvements constructed or placed upon any portion of the Property in violation of the Restrictions. For purposes of this provision, "Improvements" shall mean buildings, roads, structures, driveways, and paved parking areas. Violation of this Covenant shall be grounds for the Department to file civil and/or criminal actions, as provided by law.

ARTICLE VI VARIANCE, TERMINATION, AND TERM

6.01 Variance. Covenantor or any other aggrieved person may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC Section 25202.6.

6.02 Termination. Covenantor or any other aggrieved person may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&SC Section 25202.6.

6.03 Term. Unless ended in accordance with the Termination Paragraph above, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII
MISCELLANEOUS

7.01 No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02 Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Kern within ten (10) working days of the Covenantor's receipt of a fully executed original.

7.03 Notices. Whenever any person gives or serves any notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner:

R.D. Uhrich
Assistant Vice President
Real Estate Department
1800 Farnam Street
Omaha, Nebraska 68102

To the Department:

James M. Pappas, P.E.
Chief
Land Disposal Branch
10151 Croydon Way, Suite 3
Sacramento, California 95827-2106

Any party may change its address or the individual(s) to whose attention a notice is to be sent by giving written Notice in compliance with this paragraph.

7.04 Partial Invalidity. If any portion of the Restrictions or any other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor

Union Pacific Railroad Company

By: [Signature]
Title: Assistant Vice President
Real Estate Department

Date: 1-8-2001

Department of Toxic Substances Control

By: [Signature] mp
Title: Chief, Land Disposal Unit Branch

Date: 02/01/2001

EXHIBIT "A"
GOSFORD SITE / FORMER MAGNA FACILITY
(UNION PACIFIC RAILROAD COMPANY)

BEING ALL THAT PORTION OF THE SOUTHEAST QUARTER OF SECTION 17
AND THE NORTHEAST QUARTER OF SECTION 20, TOWNSHIP 30 SOUTH,
RANGE 27 EAST, M.D.M., CITY OF BAKERSFIELD, COUNTY OF KERN, STATE
OF CALIFORNIA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 20; THENCE
NORTH 89°16'04" WEST, ALONG THE NORTH LINE OF THE NORTHEAST
QUARTER OF SAID SECTION, 861.95 FEET; THENCE SOUTH 00°43'56" WEST,
AT RIGHT ANGLES TO SAID NORTH LINE, 1.48 FEET TO THE POINT OF
BEGINNING; THENCE ALONG THE FOLLOWING EIGHT (8) COURSES:

- 1) NORTH 89°11'00" WEST, 50.70 FEET; THENCE
- 2) NORTH 88°30'45" WEST, 81.70 FEET; THENCE
- 3) NORTH 85°39'06" WEST, 70.46 FEET; THENCE
- 4) NORTH 86°45'29" WEST, 137.01 FEET; THENCE
- 5) NORTH 88°45'57" WEST, 278.24 FEET; THENCE
- 6) SOUTH 00°09'46" WEST, 117.32 FEET; THENCE
- 7) SOUTH 89°10'06" EAST, 615.27 FEET; THENCE
- 8) NORTH 01°29'41" EAST, 104.36 FEET TO THE POINT OF BEGINNING.

CONTAINING 1.58 ACRES.

THIS LEGAL DESCRIPTION DOES NOT CONSTITUTE A LEGAL
PARCEL AS DEFINED BY THE SUBDIVISION MAP ACT.

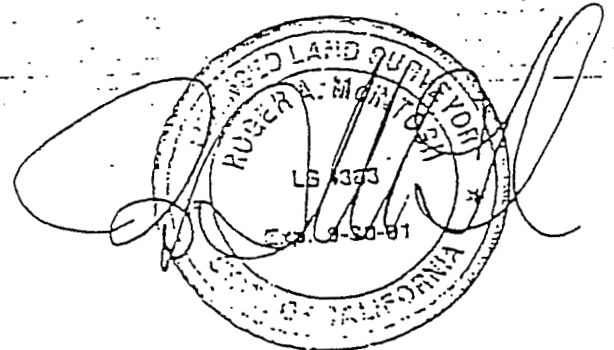
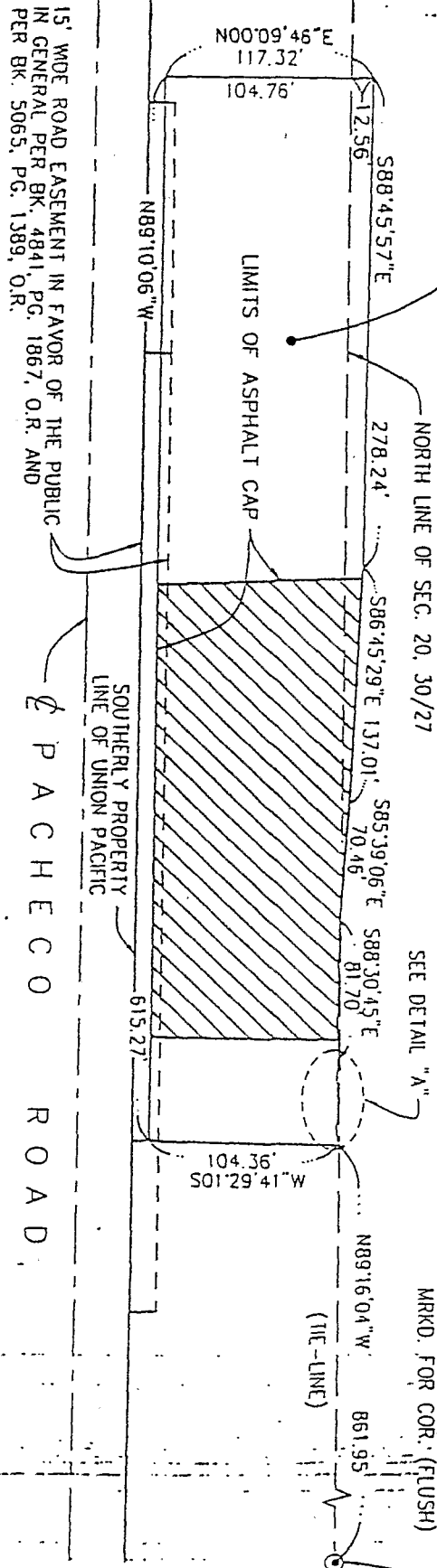


EXHIBIT "B"

SECTION 17, 30/27

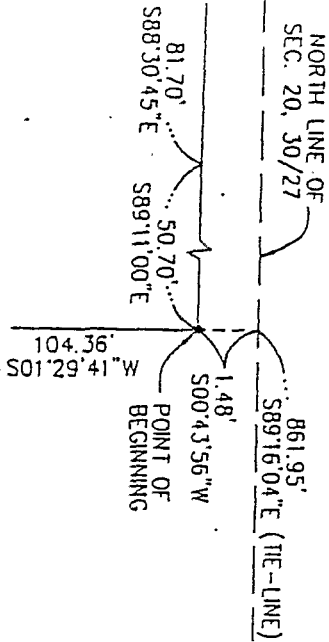
GOSFORD LEASE/FORMER MAGNA FACILITY
(UNION PACIFIC RAILROAD COMPANY)



SECTION 20, 30/27

☐ P A C H E C O R O A D

15' WIDE ROAD EASEMENT IN FAVOR OF THE PUBLIC
IN GENERAL PER BK. 4841, PG. 1867, O.R. AND
PER BK. 5065, PG. 1389, O.R.



DETAIL "A"
SCALE: 1"=5'

SCALE: 1" = 100'

REVISED 8-22-2000 ADDED ASPHALT CAP JLM

EASEMENT AREA
69,711 SQ. FT. (1.58 AC)

JCB. NO. 2000.68
Q068ES01.DWG
07/05/2000 - SLU

GOSFORD LEASE/
FORMER MAGNA FACILITY
(UNION PACIFIC RAILROAD CO.)

McINTOSH & ASSOCIATES
 LAND SURVEYING - CIVIL ENGINEERING
 2001 WHEELAN CT., BAKERSFIELD, CA 93309
 (661) 334-4511